

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 3793 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RG THAKOR & ORS
VERSUS
STATE OF GUJARAT

Appearance:

MR SHALIN MEHTA for the Petitioner
MS MANISHA LAVKUMAR for MR SP HASURKAR for
Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 24/07/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The petitioners are praying for direction to the respondents to absorb them permanently in the cadre of Junior Clerks. Further prayer has been made for giving them all the consequential benefits i.e. the promotion, increments etc.. Next prayer has been made for direction to the respondents to include the names of the petitioners in the seniority list of Junior Clerk. Another prayer has been made for direction to the respondents to promote the petitioners to the post of Sr. Clerk, Sales Tax Inspector, Sales Tax Officer and Assistant Commissioner. Only request probably left out to be made is to give them the promotion to the post of Commissioner of Sales Tax or Secretary to the Finance Department.

3. I fail to see any justification in any of the prayers of the petitioners. The petitioners are Punch Operators (Sales Tax Department). Their recruitment is made under the rules framed under Article 309 of the Constitution of India known as Punch Operator (Sales Tax Department) Recruitment Rules, 1977. It is the case of the petitioners that the punching machines have become obsolete and the Department is not taking from them the work of Punch Operators. The Department is taking from them the work of Junior Clerk and as such they have acquired a right to be absorbed as Jr. Clerks. I fail to see any merits in this contention. Even if it is taken that the Department is taking from them the work of Jr. Clerk, they have not acquire any right whatsoever for their absorption as Jr. Clerk with all the consequential benefits. For the posts of Jr. Clerk and the Punch Operators there are separate rules of recruitment. Rules of recruitment on the post of Jr. Clerk have been framed under Article 309 of the Constitution and under those rules, on being put by the Court, learned counsel for the petitioners has failed to point out any provision for absorption of this category of the persons in that services. Learned counsel for the petitioners has also failed to show any other provision for their absorption as Clerks either under any rules framed under Article 309 of the Constitution or any resolution or standing order of the State Government.

4. What the learned counsel for the petitioners next contended that in the Bureau of Economics and Statistics under the recruitment rules framed, a punch operator is eligible to get promotion on the posts of Statistical Assistant, Inspector and Officer. Even if it is taken to be correct, these are different services

under separate service rules framed under Article 309 of the Constitution and on the basis of which it is difficult to accept that the petitioners have been meted with hostile discrimination. Each department has its own service rules looking to the nature of the work and duties to be discharged. In the Sales Tax Department Rules, there is provision only for one promotion of the punch operators. If the promotion channels are not provided to the punch operators of more than one promotion, only on this ground, there cannot be any justification in the prayer of the petitioners for their absorption in the cadre of Clerks. These are the matters which are regulated under the rules. If the Rules do not provide for such an absorption, this claim cannot be accepted. Under Article 226 of the Constitution, this court can only enforce legal and fundamental rights of the petitioners and in this case, I do not find any infringement of their any of the legal or fundamental rights. It is also not correct to say on the part of the petitioners that they have no promotional avenues. Frankly speaking, the promotional avenues may not be available for more than one promotion but nevertheless the petitioners are entitled to get higher pay scales during their services at three stages i.e. at the stage of completion of nine years of services then at the stage of completion of 18 years of services and then on completion of 27 years of services. So it is not the case where there will be any stagnation which has to be faced by the petitioners. Even after first promotion, the petitioners can be given the benefit of higher pay scale at the level of completion of 18 years services and 27 years' services.

5. This special civil application is wholly misconceived and accordingly the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. The petitioners are directed to pay Rs.500/= as costs of this petition to the State of Gujarat.

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